No. ~~42929~~-5-II

COURT OF APPEALS, DIVISION II

STATE OF WASHINGTON

STATE OF WASHINGTON,
RESPONDENT,

vs.

JOHN ALLEN BOOTH,
APPELLANT.

On Appeal from the Lewis County Superior Court
Cause No. 10-1-00485-2

Richard Brosey, Judge

Appellant's Statement of Additional Grounds

John A. Booth
Pro-Se
1313 N. 13th Ave
Walla Walla, Wa
99362

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REVISED CODE OF WASHINGTON

9.73.030
9.73.095
9.94a.142
10.101.30
10.01.160

WASHINGTON STATE CONSTITUTION

Article I §22

SUPREME COURT CASES

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U.S. v. Granados, 962 F.2d 767, 771 (8th Cir.1992)
U.S. v. Walker, 39 F.3d 489, 493 (4th Cir. 1994)

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ASSIGNMENTS OF ERROR

1. The Trial court abused it's discretion and Violated Booth's Due Process rights by admitting an illegally obtained phone call and the evidence obtained as a result of that phone call into evidence.

2. The Prosecution Violated Booth's Constitutional rights and committed misconduct by shifting the burden of proof onto the defense.

3. The trial Judge abused his discretion by removing one of the attorneys from the case.

4. The Trial Court abused it's discretion and violated Booth's constitutional guarantees by imposing fines and restitution.

ISSUES PERTAINING TO THE ASSIGNMENT OF ERROR

1. Did the State violate the privacy act, and ignore a court order by gathering evidence from Booth after they had been put on notice not to?

2. Did the Prosecutor shift the burden of proof onto the Defense by asking Booth where his witnesses were to confirm his version of events?

3. Did the trial Judge interfere with Booth's sixth amendment right to counsel?

4. Is it proper to give a person fines that will never have the ability to pay them?

STATEMENT OF CASE

In December of 2011 John Booth was convicted in the Lewis County Superior Court of two counts of first degree murder, one count of attempted first degree murder one count of second degree murder, one count of unlawful possession of a firearm, and one count of attempted extortion.

Since the facts and realities of this case are completely different, I ask that the court just refer to my inept appellate counsels brief to save time and space.

ISSUE

The trial court abused it's discretion and violated Booth's Due Process rights by admitting an illegally obtained phone call, and the evidence obtained from that phone call into evidence.

FACTS

On 9-2-2010, James Dixon, John Booth's first lawyer filed an appearance notice on his behalf. The state accepted that notice and had no objection to it.

Inside that notice it specifically stated that, "Agents of the state of Washington are not under any circumstances to contact the defendant directly, ask any questions of defendant or attempt in any other way to gather evidence from him without the presence of his attorney" (see Exhibit A)

Again the State had no objection to that. Once that notice was filed it became a court order of sorts. The State was put on notice not to gather any evidence from Mr. Booth at all. Had the state had any problem with that, there would have been a hearing on it like every other disputed issue or ruling.

ARGUMENT

Here I contend that the interception of my phone calls was Illegal, Violated my Due Process rights, Violated the Washington State constitution article I section 7 and should have been supressed.

I made this argument by myself in open court with no legal help and no law library available. I do not have the transcripts from that 3.6 hearing although I have requested the transcripts in motions and letters to the appeals court and the lewis county superior court, as well as to the lawyers involved. Nobody has provided

me with any transcripts except for the bare minimum of my trial transcripts to date. (see Exhibits B)
But there is mention of the upcoming hearing in (RP 11-4-2011 page 65-66) As well as the states brief arguing against me (see Exhibit C)

The trial court ruled against me and allowed the phone call and the evidence obtained from it into evidence

This Phone call was used to obtain information leading to the location of the firearm used in this case (RP 12-13-2011 pg 14-19)

Had the state not used this illegally obtained phone call, the fruit from the poisonous tree rule would have applied, in that any evidence obtained from the use of that phone call would have been inadmissable.
I was clearly prejudiced by the admission of this evidence without the gun, the states entire case relied on the testimony of two witnesses who were unreliable at best.

The privacy act prohibits the interception or recording of a private communication transmitted by telephone unless all parties to the communication consent and a communication is private under the act when (1) The parties have a subjective expectation that it is private and (2) that expectation is objectively reasonable (wests rcwa 9.73.030 (1) (A)

The State relied on RCW 9.73.095 in it's brief. According to that RCW, State Correctional Facility is defined as " A facility that is under the control and authority of the Department of Corrections, and used

for the incarceration, treatment, or Rehabilitation of convicted felons.

In this case I was not convicted of any crime, I was a pre-trial detainee, and this is a county jail under the control and authority of the Lewis County Sheriff's Department.

The States argument that the State Supreme court held that a jail inmates phone calls do not violate the privacy act falls short in the fact that the case stated relies on RCW 9.73.095 (2) (b), That RCW says that the operator shall notify the reciever that "the call is coming from a prison offender, and that it will be recorded and may be monitored.

Lewis County Jail's phone system does not say that. It says that "your call may be recorded or monitored" see states brief (Exhibit C) and (RP 12-13-11 pg 13)

Here the State was put on notice not to attempt to gather information from me, and even though I suspected that the state would break the law, I was not sure of it. I knew that because of that appearance notice any information obtained through their underhanded means would not be admissable. Add that to the fact that the operator message does not state conclusively that the phone calls will be recorded but says that the call "may" be recorded, I could not have reasonably known that the state would break the court order.

This case differs from STATE v. ARCHIE, 148 Wn.App. 198, 204, 199, P.3d 1005 (2009) in that Archie's case from the king county jail, the announcement said, "This call will be recorded and subject to monitoring at any time" and had some signs posted. In the Lewis County jail it did not say any of that and there is no signs.

I was in an isolated part of the jail, was the sole occupant of the entire "jail tank" (RP 12-13-11 pg 15) was the only person able to use that phone, did not have any no contact orders or protection orders against me. The "operator" does not say that the call "WILL" be recorded as the statute says, but says that the call "MAY" be recorded, may is a permissive word where "WILL" is definite. The language in the statute clearly states what it means and it means that the recording will tell you that your phone call will be recorded. The phones at Lewis county Jail do not state that.
Therefore I am entitled to the protections of article I section 7 of the privacy act in the constitution of the state of Washington.

This case also differs from **STATE v. PETITLERC, 53 Wn.App. 419, 435, 768, P.2d. 516 (1989)**. In that the wording in the appearance notice is different, it said "It is further requested that no law enforcement officials contact or question the above named juvenile without the undersigned attorney present". And he made some sort of voluntary confession. I have never spoken to any law enforcement personnel. Ever. Everyone knew that I had at least two lawyers at the time and I did not waive my 6th amendment rights.

Therefore the court erred in denying my motion to supress the phone call and gun evidence obtained from that phone call in the 3.6 hearing on 12-1-11 or 12-2-2011, and any information from the interception of my phone calls should be supressed and a new trial granted.

ISSUE

The prosecutor violated My constitutional rights and committed misconduct by shifting the burden of proof onto the defense.

The Prosecutor asked Booth about his lack of alibi witnesses (Rp 12-14-11 pg 68). The Prosecutor violated my Due Process rights and committed misconduct by doing this.

ARGUMENT

A defendant bears no duty to present any evidence. The State bears the entire burden of proving each element of it's case beyond a reasonable doubt. See **in re WINSHIP 397 U.S. 358, 90 S.Ct. 1068, 25 L.Ed.2d 368 (1970).**

When the Prosecutor questioned me about my lack of witnesses to prove my innocence, he flagrantly comitted misconduct and violated my Due Process rights. (Rp 12-14-11 pg 68). The prosecutors statements and questions suggested that I was obliged to call witnesses and prove my innocence. There is no such duty. **TRAWEEK 43 wash. App.** at 106, 715 P. 2d 1148.

It is not proper for the state to comment on a failure of the defense on what it has no duty to do. Although My attorney Roger Hunko, did not object, I assert that the remarks about me not calling any witnesses to corroborate my version of events was incurable and prejudical and could have not been cured by a jury instruction or objection, But would have only made the situation worse.

Arguments by the prosecution that shift the burden of proof onto the defense constitute misconduct. See STATE v. GREGORY 158 Wash. 2d 759, 859,60, 147 P.3d 1201 (2006). "An argument about the amount or quality of evidence presented by the defense does not necessarily suggest that the burden of proof rests on the defense." However " A prosecutor generally cannot comment on the lack of defense evidence, because the defense has no duty to present evidence." State v. CHEATAM 150 Wash. 2d 626, 652, 81 P.3d 830 (2003).

See also State v. McCREVEN 170 Wn.App. 444, and STATE v. PIERCE 169 Wn. App. 533.

I know that the failure to object to an improper remark by a prosecutor constitutes a waiver unless the remark is flagrant and ill intentioned and causes an enduring and resulting prejudice that could not have been neutralized by an admonition to the jury. I am stating that this line of questioning was way out of line, you cannot unring a bell and once the prosecutor said what he did in the tones that he used, it was so extremely prejudical that it would have done more harm than good to object. The report of proceedings are not word for word first of all, the prosecutor asked me about 4 different times in different ways the same question about the lack of evidence I was producing to clear my name.

The prosecutor cannot comment on the lack of preparation by the defense, especially when I asked for a contiunance in the first place and stated that we were no where near ready to go to trial (RP 12-5-11). I could not have cured the prejudice that was imbedded in the minds of the jury from that one line of questioning alone.

I did not ever have the effective assistance of counsel to begin with, so there was no way to cure the enduring prejudice put upon me by the prosecutor. If there was a recording I could produce that could show the mockery in his voice, it would make it crystal clear that his remarks were ill intentioned. I am sure my due process rights of the fifth and fourteenth amendments were clearly stomped on as well as the sixth amendment of the Washington constitution.

For the reasons stated in here as well as in the cases cited, I believe that this case should be overturned and remanded for a new trial.

ISSUE

The Trial judge abused his discretion by removing one of the attorneys assigned to my case.

I was facing the death penalty and was appointed two attorneys pursuant to SPRC 2.

ARGUMENT

Generally the right to counsel in all criminal cases is protected by the 6th amendment to the United States constitution, and article I section 22 of the Washington State constitution. Once Counsel is appointed there is created an attorney client relationship which is inviolate.

The California Supreme Court rejected the claim that an indigent defendant has no cause to complain about the removal of his court appointed attorney, noting that the attorney client relationship:

"is independent of the source of compensation...(O)nce counsel is appointed to represent an indigent defendant, whether it be the public defender or a volunteer private attorney, the parties enter into an attorney-client relationship which is no less inviolable than if counsel had been retained. To hold otherwise would be to subject that relationship to an unwarranted and invidious discrimination arising **merely from the poverty of the accused.**" (Emphasis supplied)

SMITH v. SUPERIOR Ct., 68 Cal. 2d 547,561-562 (1968). See **Morris v. Slappy, 461 U.S. 1,22-23&n. 5 (1983)** (Brennan,J., concurring in result) ("considerations thath may preclude recognition of an indigent defendant's right to choose his own counsel.. should not preclude recognition of an indigent defendant's interest in continued representation by appointed attorney with whom

he has developed a relationship of trust and confidence").

In **STEARNS v. CLINTON,** 780 SW 216 (Tex. Crim. App., 1989), A defendant charged with capital murder in Texas sought and was successful in obtaining a Writ of Mandamus reinstating his court appointed attorney, who had been removed by the trial judge over the objections of the defendant. The Texas court relied on the Smith decision and also **Harling v. United States,** 387 A.2d 1101 (D.C. Cir. 1978).

The issue as it was framed in HARLING, was: "We are called upon to decide in this case whether a trial judge may discharge court-appointed counsel, over the objection of the attorney and the defendant and under circumstances when the removal of retained counsel would not be justified."

The answer of course was a resounding "NO". the STEARNS court in adopting the language of HARLING wrote as follows:

In resolving this issue the court noted that an indigent defendant does not have the right to the appointment of a particular attorney. This was the law in Texas. **MALCOM v. STATE**, 628 S.W.2d 790 (Tex.Cr.App. 1982). However, this court also noted "that once an attorney is serving under a valid appointment by the court and an attorney-client relationship has been established, the court may not arbitrarily remove the attorney over the objections of both the defendant and his counsel." **HARLING v. UNITED STATES**

In essence what the **HARLING** court held is that an accused with adequate funds has the right to secure counsel of his own choice. If, however, the defendant

is indigent he must be appointed counsel. Gideon V. Wainwright, 372 U.S. 335, 83 S.Ct. 792, 9L.Ed 2d 799 (1963). Once counsel has been validly appointed to represent an indigent defendant and the parties enter into an attorney client-relationship it is no less inviolate than if counsel is retained.

Other states have adopted the same reasoning. In **PEOPLE v. DUFREE,** 544 N.W. 2d 344, 215 Mich App 677 (Mich Ct. of App., 1996). The **Harling** and **Smith and Stearns** reasoning was adopted by the Michigan courts.

The fact that substitute counsel may have performed adequately is of no consequence. The trial court improperly removed court-appointed counsel over the objections from the attorney and defendant. This issue relates to an arbitrary and improper infringement of the sixth amendment right to counsel. This is not a claim of ineffective assistance of counsel where a showing of prejudice is required. Thus reversal is required where the trial court improperly interfered with defendants sixth amendment right to counsel. **Harling,** supra, at p. 1106; **BLAND v. DEP'T of CORRECTIONS,** 20 F.3d 1469, 1478-1479 (CA 9, 1994).

The appointment of counsel for indigent persons in Washington is regulated by RCW 10.101.30. It is clear from a reading of the statute, that terms for termination of the contract, or representation **shall** be included in the terms of the contract. In this case neither the order appointing Mr. Dixon or Mr. Hunko, includes that

language, it does not say that one of the attorneys would be removed if death was not sought. Both were appointed under the assumption that as in any other case they would remain counsel of record, subject to some malfeasance on their part of the dissatisfaction with their services by their client, until the final resolution of this case. Mr. Booth could expect no less.

Standard 16 of the WSBA standards for indigent defense services which relates to cause for termination of defender services and removal of attorney states as follows:

Standard:

Contracts for indigent defense services shall include the grounds for termination of the contract parties. Termination of a provider's contract should only be for good cause. Termination for good cause shall include the failure of the attorney to render adequate representation to clients; the willful disregard of the rights and best interests of the client; and the willful disregard of the standards herein addressed.

The trial judge relied on the comment in SPRC 2 that says "If the period of time for filing the death notice has passed, and the death notice has not been filed, the court may then reduce the number of attorneys to one to proceed with the murder trial."

The comment on this rule is only a comment. The time allotted for filing of the death notice did not run out as the comment refers to but the state instead chose not to file the death notice.

RPC 1.8 (f) applies here. It states as follows:

(f) A lawyer shall not accept compensation for representing a client from one other than the client unless;

(1) the client gives informed consent;

(2) **there is no interference with the lawyer's independence of professional judgment or with the client-lawyer relationship;** and

(3) information relating to representation of a client is protected as required by RULE 1.6. (Emphasis added)

Comments 11, 12, and 29 of the rule are on point here as well.

The rules of Equity should have applied here as well, I was prosecuted by two prosecutors (RP 12-5-11) giving the state an unfair advantage at trial, as they had two heads plus the backing of an entire state legal agency backing them up and helping them to do research and such, I had one lawyer who performed so poorly that it was ridiculous, I needed the help of at least two lawyers in my case, this is a case that was enormous and the lack of preparation or even trying on the part of Mr. Hunko was prejudical (RP 11-4-11 pg 12-13)

Had I had the assistance of two attorneys I would have had them at least able to perform to some sort of standard that was acceptable. I don't even know what else to say on the subject but The removal of either attorney caused a violation of the sixth amendment right to counsel as well as the same right granted under Article I §22 of the Washington State constitution. It violated RCW 10.101.030, and RPC 1.8(f) and interfered with the lawyers independence and professional judgment and with the

lawyer-client relationship. The equities also require that both attorneys should have remained as counsel of record until the completion of the trial.

It should be noted that we had a hearing on this very issue in about may of 2011, there was a brief filed in the court on the matter on April 27, 2011. I have asked for the transcripts here as well but nobody will even answer me about these requests, I have filed motions and asked my attorney stephanie cunningham at least twenty times for additional transcripts so I could point out on the record exactly where errors occurred to help the court, but as I said nobody responds to me.
(See Roger Hunko's Brief, Exhibit D)

In summation I ask that the case be overturned on this issue as well and the case be remanded to the Superior court of Lewis County for a new trial.

Issue

The trial court abused it's discretion by imposing fines and restitution on me.

On April 20, 2012, I had a restitution hearing. during that hearing I filed a brief as to why I should not have any fines or restitution imposed on me.

The United States Constitution Amendment 8 and the Washington State Constitution Article 1 §14 Both state that "Excessive bail shall not be required, nor Excessive fines imposed nor cruel and unusual punishment be inflicted.

In this case I was sentenced to 4 consecutive life sentences without parole, or any type of early release. I have no ability to ever get a job or obtain any assets. I raised these issues at the restitution hearing and filed a motion in support of the issues just in case the judge was unable to understand. Although I made a substantial argument at the hearing the judge imposed fines and restitution anyway.

Even if I had a prison job, which I do not, that job would not even provide me with the basic hygine needs in here. Prison wage jobs are about 28¢ an hour. with a maximum amount of $55 a month. The prison wage job would never even be able to pay the interest that is applied to the fines and restitution, With no interest it would take me over 40 years of my entire wages to satisfy that debt.

The record is devoid of any evidence that I will ever be able to satisfy the restitution order.

The Question is, is it excessive to impose a fine on a person who will never be able to pay it?

Is it excessive to fine a man a dime who will never even have a nickel?

I am a lifetime prisoner, I will never have the ability to pay any type of fines or restitution.

It is well settled case law that legal financial obligations may only be imposed upon those with the for-seeable ability to pay them. **FULLER v. OREGON 417 U.S. 40, 94 S.Ct. 2116, 40 L.Ed 2d 442 (1974). And such** obligations may only be forced upon those who actually become able to pay them. See also **U.S. v. DAVIS 117 F.3d 459 (11th cir 1997).**

It is improper to impose a fine that the defendant has little chance of repaying. **United States v. GRANADOS, 962 F. 2d 767, 771 (8th Cir. 1992).**

"The court shall not sentence a defendant to pay costs unless the defendant is or will be able to pay them. **State v. Blank, 131 Wn. 2d 230, 930 P.2d 1213 (1997)**

RCW 10.01.160 states;

In determining the amount and method of payment and costs, the court shall take account of the financial resources of the defendant and the natures of the burden that payment of the costs will impose. The determination that a defendant has the present or likely future ability to pay legal financial obligations must be based on more than a statement of fact that they are due.

The court is required to make specific factual findings regarding factors for imposition of a fine because those findings are essential to effective appellate review of fines imposed. Failure to make any findings is grounds for vacation of fine. **Unites States v. Walker, 39 F.3d 489, 493 (4th Cir. 1994); U.S. v. Franscisco, 35 F.3d 116 (4th Cir. 1994).**

State v. Bertrand says that "in determining whether L.F.O's will be imposed, and the amount, the income, financial resources, and earning capacity of the defendant." Bertrand, 165 Wn.App.393,267 P.3d 511

This same requirement is included into our statute on restitution. **RCW 9.94a.142 (1).** The court should take into consideration the total amount of restitution owed the offenders past, present, and future ability to pay, as well as any assets the offender may have."

In this case there is no evidence that I will ever have a single dollar to my name, I will never have a job or have any assets. I have life in prison and have no ability to generate income. There is no evidence which the court could use to make the necessary findings of a present of future ability to pay. It is my position that the only reason the Judge in this case ordered restitution is out of vindictiveness. The rule of lenity operates to resolve statutory ambiguities, absent legislative intent to the contrary, in favor of a criminal defendant.

Once a defendant has shown his present indigence, the discretion of the sentencing court should generally

be in favor of waiving fines and restitution. **U.S. v. Arebeven, 251 F.3d 337 (2001).**

A courts authority to order restitution is statutory. **State v. Hennings, 129 Wn.2d 512, 519, 919 P.2d 580 (1996).** "they are to be broadly construed in order to carry out the legislatures intent of providing restitution, but where the legislature has clearly determined that a defendants future and present ability to pay must be considered, the court must apply the clear language of the statute."

This case is clear, I will never have the ability to pay a fine, the Washington system attempts to collect them, there is no record to support the imposition of any sort of fine or restitution. The Constitution Guarantees me the freedom from Excessive fines.

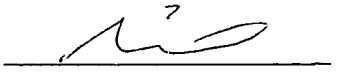
I ask the court to remand My case to the superior court to relieve me from the fines that were imposed on me.

CONCLUSION

In conclusion the State violated my constitutional rights and my due process rights, violated the rules of equity and lenity.
The trial court abused its discretion a number of times and in all fairness should be granted a new trial with specific instructions not to allow illegally obtained evidence and the fruit from that poisoned tree in as well. Alternatively, I ask the court to apply the clear language of the constitution and remove all fines and restitution from me, as it is unduly burdensome, violates the constitution and is unnecessary.

Once again I ask that my convictions be reversed and the case be remanded for a new trial.

Dated: May 9, 2013



John Booth

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EXHIBIT A

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

IN AND FOR THE COUNTY OF LEWIS

STATE OF WASHINGTON, **Plaintiff,** **vs.** **JOHN ALLEN BOOTH, JR.,** **Defendant.**	**No. 10-1-00485-2** **NOTICE OF APPEARANCE, PLEA OF NOT GUILTY, DEMAND FOR DISCOVERY, JURY TRIAL, NOTICE TO NOT CONTACT DEFENDANT, AND MOTION FOR BILL OF PARTICULARS**

TO: CLERK OF COURT, and

TO: BRADLEY MEAGHER; Deputy Prosecuting Attorney

NOTICE IS HEREBY GIVEN that JAMES J. DIXON of DITLEVSON RODGERS DIXON, P.S. hereby makes his appearance for and on behalf of the above named Defendant, and requests that all copies of all pleadings be served upon said firm at the office address below stated.

COMES NOW the above-named Defendant appearing by and through the undersigned attorney and enters a plea of not guilty to all of the charges in the above-entitled case(s).

Said Defendant hereby requests a jury trial in this matter.

Said Defendant hereby reserves the right to petition the Court for a deferred prosecution pursuant to RCW 10.05, if applicable.

ORIGINAL

DITLEVSON RODGERS DIXON, P.S.
ATTORNEYS AT LAW
324 West Bay Drive NW, Suite 201
Olympia, Washington 98502
(360) 352-8311, FAX: (360) 352-8501

On behalf of the above-named Defendant, pursuant to CrR 4.7 or CrRLJ 4.7, we demand the following information:

1. The names, addresses and phone numbers of all persons the Prosecutor may call as witnesses at the time of hearing or trial, together with copies of any notes, written or recorded statements, the substance of any oral statements made by any of those witnesses, and summary of their testimony to be offered at hearing or trial;

2. Any and all written or recorded statements and the substance of any and all oral statements made by the Defendant.

3. Any and all police or investigative reports and/or statements of experts made in connection with the particular case, including results of physical or mental examinations and scientific tests, experiments, or comparisons, including the results of all physical and/or mental tests administered in connection with the Defendant's arrest, or the complainant's complaint, and any indication that the complainant was ever hypnotized.

4. A summary of any and all evidence Plaintiff would introduce to establish that the arresting officer had reasonable grounds to believe the Defendant committed the offense charged.

5. The names and addresses of any and all expert witnesses whom the Plaintiff will call at the hearing or trial, the subject of their testimony, and any reports they have submitted to Plaintiff.

6. Any and all books, papers, documents, photographs of tangible objects, which the Plaintiff intends to use in the hearing or trial, or which were obtained from or belong to the Defendant.

7. Any and all records or prior criminal convictions of the Defendant known to the Plaintiff and of persons whom the Plaintiff intends to call as witnesses at the hearing or trial.

8. That a view of any and all video tapes of the Defendant be allowed by the Defendant's attorney prior to the time of trial.

9. Any and all information or material within Plaintiff's knowledge or possession which tends to negate the Defendant's guilt as to the offense charges.

DITLEVSON RODGERS DIXON, P.S.
ATTORNEYS AT LAW
324 West Bay Drive NW, Suite 201
Olympia, Washington 98502
(360) 352-8311, FAX: (360) 352-8501

10. A list of all physical items of evidence.

11. Photocopies of any and all form or forms signed by the Defendant which indicate the Defendant was informed of his rights, including, but not limited to, the basis for the arrest of the Defendant.

Agents of the State of Washington are not under any circumstances to contact Defendant directly, ask any questions of Defendant or attempt in any way to gather evidence from him without the presence of his attorney.

The Defense hereby moves the Court to direct the filing of a Bill of Particulars pursuant to CrR 2.1(d) or CrRLJ 2.4(e), including a concise statement of the essential facts constituting the specific offense or offenses with which the Defendant is charged, and a statement of the specific statute under which the Defendant is charged.

THE PURPOSE OF THIS DEMAND FOR DISCOVERY IS TO ENABLE THE DEFENDANT TO PROPERLY PREPARE TO DEFEND AGAINST THE CHARGES FILED HEREIN TO ADEQUATELY PREPARE TO EXAMINE ALL WITNESSES WHO MAY TESTIFY IN THE CASE, AND TO ELIMINATE THE ELEMENT OF SURPRISE OR THE NEED FOR A CONTINUANCE OF THE DAY OF TRIAL.

THEREFORE, IN THE EVENT OF PLAINTIFF'S FAILURE TO DISCLOSE THE ABOVE-REQUESTED INFORMATION AT LEAST SEVEN (7) DAYS PRIOR TO TRIAL, THE DEFENDANT WILL MOVE TO SUPPRESS AND EXCLUDE ALL NON-DISCLOSED EVIDENCE.

DEMAND TO PRODUCE EXPERT WITNESS AT TRIAL:

Pursuant to CrR 6.13 the Defendant demands that the prosecution produce its expert witnesses at trial. The Defendant hereby serves notice on the State that the Defendant will object to the introduction of any official written report, whether certified or not, of an expert witness in lieu of the expert's live testimony at trial.

DATED this 31st day of August, 2010.

JAMES J. DIXON, WSB #20257
Attorney for Defendant

DITLEVSON RODGERS DIXON, P.S.
ATTORNEYS AT LAW
324 West Bay Drive NW, Suite 201
Olympia, Washington 98502
(360) 352-8311, FAX: (360) 352-8501

EXHIBIT B

AFFIDAVIT

State of Washington)

vs.) ss

John A. Booth)

I, John Booth, after being duly sworn upon under oath, and aware of the penalty of perjury, do hereby depose and say:

I have from the very start of this appellate process asked for the complete record in my case including voir dire so that I can raise all of the issues that I preserved for appeal heard by a court of higher jurisdiction. I have specifically asked for this from the very first order of indigence. As well as every letter that I have sent my lawyer.

To date all I have received is 9 days of trial transcripts and one motion hearing. I am being forced to file this SAG without any of the record I need. I have contacted the clerk ands he says that I have received everything that I was suppose to, but I have not. I only received one of the three volumes of transcripts, none of the clerks papers, none of the 3.6 hearings, none of the days that we discussed on record the misconduct of the prosecution. Nothing. I have filed at least two motions for more transcripts with this court, as well as two with the sentencing court, I just received a response denying them from the court clerk last week after I was done with this part of my appeal, I have filed a motion for reconcideration on that as well as motions for more time to file this sag, It took me 5 months to get a response from the first one, so I have to send this in now because I was told if it was not in by the 7th of June, I would forfit my appeal. My lawyer is inadequate and never once spoke to me about my appeal and filed it without talking to me and she raised none of my issues. I filed a motion to remove her but nobody responds to me.

I am no where near done with my SAG, but without any record or anything, I cannot designate issues for appeal, I have done my best here and hope it is good enough. I am only putting this in now because I am being threatened with being time barred or some crazy thing.

--
John Booth #779999

Subscribed and sworn to, before me, this 29 day of May 2013.

Notary Public
State of Washington
BECKY L HANEYNIXON
MY COMMISSION EXPIRES
SEPTEMBER 13, 2016

Becky L Haneynixon
Notary Public in and for the State of Washington. Residing in Walla Walla, Washington.
My commission Expires; 9/13/16